

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000352-001 DT

01/07/2005

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

J G H, L L C

SCOTT M CLARK

v.

LIZZIE CASSITY-COLE (001)

EDWARD F THOMAS

PHX JUSTICE CT-CENTRAL
REMAND DESK-LCA-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and I have considered and reviewed the record of the proceedings from the trial court, exhibits made of record and the memoranda submitted.

Facts

The matter before the court results from a forcible detainer action against Appellant, Lizzie Cassity Cole, which was brought by Appellee, JGH, LLC, owner of the Huntington Apartments. While Appellee was represented by private counsel, Appellant was represented by Community Legal Services, a government-sponsored, not-for-profit agency that provides legal services, without charge, to the indigent. A jury found in favor of Appellant on October 29, 2003. Consequently, on November 20, 2003, the Phoenix Justice Court – Central entered a final judgment in favor of Appellant. On December 12, 2003, Appellant filed a motion for attorney's fees. On January 5, the lower court denied Appellant's motion for attorney's fees on the grounds that federal law prohibits the court from awarding legal fees to entities such as Community Legal Services. Appellant, having filed a timely notice of appeal, now brings the matter before this court.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000352-001 DT

01/07/2005

Issue & Analysis

While Appellant's central issue is whether a non-profit legal aid organization may recover legal fees, I must address the most relevant issues before the bar. First, Appellant failed to request a claim for attorney's fees in her pleadings, as required by Rule 54(g)(1) of the Arizona Rules of Civil Procedure. Rule 54(g)(1) states:

*Claims for Attorneys' Fees. **A claim for attorneys' fees shall be made in the pleadings.*** [emphasis added]

Plaintiff did not include a request for attorney's fees until after the judgment was final. Therefore, on this point of law alone, Appellant's central issue is moot. Further, the Arizona Supreme Court has held that a court may not award attorney's fees after a judgment is final, unless the party seeking attorney's fees files a motion for a new trial or files a motion to amend or alter the judgment.¹ The motion must be filed within fifteen days after entry of final judgment.² If the motion is not timely filed, the trial court does not have jurisdiction to decide it.³ In the case at bar, the final judgment was entered on November 20, 2003, by the Phoenix Justice Court – Central. Appellant did not file her motion for attorney's fees until December 12, 2003, 22 days after the final judgment. Thus, the Phoenix Justice Court – Central did not have jurisdiction to even consider the issue of Appellant's attorney's fees.

Though I believe Appellant's central issue is moot, nevertheless, I will address the issue of whether a non-profit legal aid organization, or Legal Services Corporations (hereinafter "LSC"), may recover legal fees, as I believe that this issue is one which will likely reoccur.

*Peretz v. Legal Aid Foundation of Los Angeles*⁴ mirrors the facts in the case at bar and sheds considerable light on this issue. While Appellee relies on section 504(a)(13) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 to show that a non-profit legal aid organization may not recover attorney's fees under a contract, Appellee does not understand the law. Section 504(a)(13) provides in relevant part:

(a) None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity ... (13) that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the award of such fees....

¹ *Monti v. Monti*, 186 Ariz. 432, 435, 924 P.2d 122, 125 (App. 1996).

² *Id.*

³ *Id.*

⁴ 22 Cal.App.4th Supp. 1, 18 Cal.Rptr.3d 863 (Cal.App.Super. 2004).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000352-001 DT

01/07/2005

The court in Peretz held:

In short, while the regulation undoubtedly has an in terrorem [sic] effect on the exercise of the ability to claim attorney fees, its violation can be redressed only by LSC, and only pursuant to the disciplinary scheme created by its regulations. **Congressional and regulatory history dictate that the regulation not be used by a court to provide a defense to a motion for attorney fees.**⁵
[emphasis added]

The Peretz court further held:

In a November 26, 1997, opinion letter, LSC's Compliance and Enforcement Division stated: "We find your argument convincing that an **LSC recipient may claim and collect attorneys' fees pursuant to contract between the parties to a lawsuit.**" It reasoned that, **even if general procedural statutes are involved in its enforcement, an award of contractually provided attorney fees is pursuant to contract, not statute or common law.**⁶ [emphasis added]

I find that a non-profit legal aid organization may recover attorney's fees under a contract. And, as Appellant correctly argues, the Phoenix Justice Court – Central lacks authority to take cognizance of the defense to attorney's fees found in section 504(a)(13) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996:

Even if there was a failure to comply with the regulations, the proper recourse would be to complain to [the LSC]; not resistance to a fee award. 45 C.F.R. 1618.3."); *Grassley v. Legal Services Corp.*, *supra*, 535 F.Supp. at p. 818 [no private right of action]; *Ex parte Mitchell* (Ala.1981) 395 So.2d 51, 52) [motion to disqualify petitioner's attorney for his alleged violation of the Act; "the Judge lacks jurisdiction to determine the issue raised by Defendant.... Absent some other ground for disqualifying Petitioner's attorney, the Judge has a duty to

⁵ *Id.* at 6, 18 Cal.Rptr.3d at 867.

⁶ *Id.*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000352-001 DT

01/07/2005

permit Petitioner's attorney to continue his representation
in this matter."⁷

Though I find that Community Legal Services is not precluded by applicable law from requesting an award and receiving an order for attorneys fees in Arizona's courts, in this case Appellant failed to request attorney's fees in her pleadings, as required by Rule 54(g)(1) of the Arizona Rules of Civil Procedure, and Appellant did not file her motion for attorney's fees within fifteen (15) days of the final judgment. I find that the trial court did not err in denying the tardy request for attorneys fees.

IT IS THEREFORE ORDERED affirming the decision of the Phoenix Justice Court - Central.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix Justice Court - Central for all further, if any, and future proceedings.

IT IS FURTHER ORDERED that counsel for Appellee shall lodge an order consistent with this opinion no later than February 22, 2005.

⁷ *Peretz*, 22 Cal.App.4th Supp. at 5, 18 Cal.Rptr.3d at 866.